

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) Crim. No. 95-491 LH  
 )  
RICHARD MICHAEL HAWORTH, et al., )  
 )  
Defendants. )

NOTICE OF INTENT TO SEEK DEATH  
PENALTY AS TO DEFENDANT EVERETT EDWARD SPIVEY

The United States of America notifies the Court and defendant EVERETT EDWARD SPIVEY, under Sections 848(h)(1)(A) and (B) of Title 21, United States Code, and the Order Setting Date for Notice of Government's Intention to Seek Death Penalty entered January 23, 1996, that if defendant is convicted of the intentional killing of Michael Gray, as charged by Count Eight of the Superseding Indictment, the Government will seek the sentence of death for EVERETT EDWARD SPIVEY.

As Section 848(k) of Title 21 requires, the Government will seek to prove as to EVERETT EDWARD SPIVEY:

- a. One of the statutory aggravating factors set forth by Section 848(n)(1) of Title 21, and
- b. One or more of the statutory aggravating factors set forth by Sections 848(n)(2)-(12) of Title 21.

As permitted by Sections 848(h)(1)(B) and 848(k) of Title 21, the Government will also seek to prove the non-statutory aggravating factors set forth in Paragraphs 6 and 7 of this Notice. The Government believes that the circumstances of the offense are

such that, if the defendant is convicted, a sentence of death is justified under Section 848 of Title 21 of the United States Code.

The Government will seek to prove the following aggravating factors as bases for imposing the death penalty:

Statutory Factors  
Under 21 U.S.C. § 848(n)(1)

1. EVERETT EDWARD SPIVEY intentionally killed Michael Gray. Section 848(n)(1)(A).

2. In the alternative, EVERETT EDWARD SPIVEY intentionally inflicted serious bodily injury which resulted in the death of Michael Gray. Section 848(n)(1)(B).

3. In the further alternative, EVERETT EDWARD SPIVEY intentionally engaged in conduct intending that Michael Gray be killed and that lethal force be employed against Michael Gray, which resulted in Michael Gray's death. Section 848(n)(1)(C).

Statutory Factors Under  
21 U.S.C. §§ 848(n)(2)-(12)

4. EVERETT EDWARD SPIVEY committed the offense as consideration for the receipt, or in the expectation of the receipt, of something of pecuniary value. Section 848(n)(7).

5. EVERETT EDWARD SPIVEY committed the offense after substantial planning and premeditation. Section 848(n)(8).

Non-Statutory Factors Under  
21 U.S.C. §§ 848(h)(1)(B) and 848(k)

6. Victim Impact. EVERETT EDWARD SPIVEY caused the family of Michael Gray to suffer by murdering Michael Gray and hiding his body so that his remains have yet to be found.

7. Future dangerousness. EVERETT EDWARD SPIVEY represents a continuing, serious threat to the lives and safety of others. His future dangerousness is shown by his commission of acts of violence or potential violence in addition to the murder of Michael Gray, by his low potential for rehabilitation, by his lack of remorse for the violent acts he has committed, and by his threats of violence to others, as described in the following subparagraphs:

a. EVERETT EDWARD SPIVEY has engaged in acts of violence or potential violence in addition to the murder of Michael Gray. These include, but are not limited to:

(1) On June 9, 1987, EVERETT EDWARD SPIVEY committed Murder in the Second Degree with a Firearm by shooting Jesus Villanueva.

(2) From in and about 1992 to on or about September 20, 1995, EVERETT EDWARD SPIVEY used and carried firearms in connection with a narcotics trafficking offense, as charged by Count Twenty-One of the Superseding Indictment.

(3) In December 1994, EVERETT EDWARD SPIVEY attempted to kill Maximino J. Baca, conspired to kill Michael Gray and Maximino J. Baca, and used and carried firearms in connection with these offenses, as is charged by Counts Fourteen, Sixteen, Twenty-Four and Twenty-Six of the Superseding Indictment.

(4) From on or about December 30, 1994, to on or about December 31, 1994, EVERETT EDWARD SPIVEY conspired to commit arson and committed arson, as is charged by Counts Nineteen and Twenty of the Superseding Indictment.

b. EVERETT EDWARD SPIVEY has a low potential for rehabilitation. This is shown by facts including, but not limited to:

(1) Beginning in or about 1988, while he was in prison for Murder in the Second Degree with a Firearm, EVERETT EDWARD SPIVEY entered into the racketeering enterprise, the racketeering conspiracy, and the narcotics trafficking conspiracy charged by Counts One, Two and Three of the Superseding Indictment.

(2) While EVERETT EDWARD SPIVEY was on parole for Murder in the Second Degree with a Firearm, he committed offenses including but not limited to engaging in a Continuing Criminal Enterprise, as charged by Count Five of the Superseding Indictment.

(3) In and about November 1993, EVERETT EDWARD SPIVEY conspired to participate in the unlawful sale of firearms, as charged by Counts Twenty-Eight and Thirty of the Superseding Indictment.

(4) From in and about November 1993 to on or about March 1, 1995, EVERETT EDWARD SPIVEY unlawfully

possessed firearms, as charged by Count Twenty-Seven of the Superseding Indictment.

(5) Beginning in and about the Spring of 1994, EVERETT EDWARD SPIVEY maintained a premises for the distribution of marijuana, as charged by Count Eleven of the Superseding Indictment.

c. EVERETT EDWARD SPIVEY lacks remorse for his violent acts. This is shown by facts including, but not limited to:

(1) On or about June 10, 1987, while he was being taken to jail the morning after he murdered Jesus Villanueva, EVERETT EDWARD SPIVEY said that "after a wild thing like that, you don't sleep. . . it's all adrenaline."

(2) In the Spring of 1994, when discussing the murder of Jesus Villanueva, EVERETT EDWARD SPIVEY said Villanueva had "deserved to die."

(3) On May 25, 1995, EVERETT EDWARD SPIVEY made the following statements, among others, in consensually recorded conversations:<sup>1</sup>

I told [EDWARD EVERETT SPIVEY's parents], "I blew somebody the [obscenity deleted] away, man. They tried to rob me and I [obscenity deleted] 'em." I go, "You're my parents and I'm just saying what's up, man"

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1. The transcriptions set forth in this Notice are taken from preliminary draft transcriptions which have yet to be fully reviewed for completeness, voice identification, or both. Passages attributed to defendant have been reviewed for proper voice identification, however.

. . . . .  
I've blown people away before. [EVERETT EDWARD SPIVEY's parents] know I'm a shooter. They know how it is in the drug business, you know.

. . . . .  
Oh, man, dude. I couldn't sleep for months, man. It just the look of [obscenity deleted] -- I mean, I blew [Michael Gray] to pieces. . . . I hit him with a .44 Magnum from 15 feet away, and a hot load, at that. 240 grain copperjack with hollow points. He went off his [obscenity deleted] feet, a 6'2" man, 45-year-old man, went 10 feet in the air. And I mean, man, I just -- man, when we picked him up to load him in the truck, he was gutted, guy. I mean my hands slid all the way to his backbone.

d. EVERETT EDWARD SPIVEY has made threats of violence against others. These include, but are not limited to:

(1) On June 9, 1987, moments after EVERETT EDWARD SPIVEY had fatally shot Jesus Villanueva, he held the murder weapon on Timothy Mark Trujillo, an eyewitness and a friend of Villanueva's, saying that he would kill Trujillo and his family if Trujillo told anyone what had happened. At the same time, EVERETT EDWARD SPIVEY threatened to kill Villanueva's mother. EVERETT EDWARD SPIVEY's final comment, as Trujillo took Villanueva to the hospital, was "Remember your family. I'll kill your family."

(2) On or about June 11, 1987, in a telephone call from jail, EVERETT EDWARD SPIVEY threatened to

have Donald Lee Linville killed if Linville did not help him "beat the murder charge".

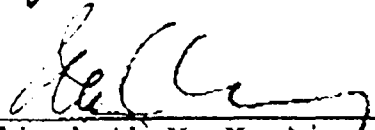
(3) While EVERETT EDWARD SPIVEY was released on bond, but before his conviction for the murder of Jesus Villanueva, EVERETT EDWARD SPIVEY pointed a gun at Linville and said that Linville was going to help EVERETT EDWARD SPIVEY get off on the murder charge.


(4) On or about August 25, 1994, EVERETT EDWARD SPIVEY pointed a loaded and cocked handgun at John Meyers and attempted to run Meyers over with defendant's vehicle.

(5) When EVERETT EDWARD SPIVEY was in Albuquerque, New Mexico, during early to mid-September 1995, he threatened to kill a law enforcement officer and his family. When EVERETT EDWARD SPIVEY was arrested in the state of Alabama on or about September 20, 1995, he was carrying a piece of paper with that officer's name and contact numbers in his wallet.

Respectfully submitted,

  
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JOHN J. KELLY  
United States Attorney

  
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Elizabeth M. Martinez  
Assistant United States Attorney

  
\_\_\_\_\_  
Robert D. Kimball  
Assistant United States Attorney

P. O. Box 607  
Albuquerque, New Mexico 87103-0607  
(505) 766-3341



I CERTIFY that true copies of  
the foregoing notice were served  
on the following counsel of record  
this      day of February, 1996:

1. Counsel for RICHARD MICHAEL HAWORTH  
Michael V. Davis, Esq.  
Marc H. Robert, Esq.  
202 Central Ave. S.E., Ste. A  
Albuquerque, New Mexico 87102
  
2. Counsel for EVERETT EDWARD SPIVEY  
Billy R. Blackburn, Esq.  
1401 Central Ave., N.W.  
Albuquerque, New Mexico 87104  
and  
Paul J. Kennedy, Esq.  
1122 Central Ave., S.W.  
Albuquerque, New Mexico 87102

Robert D. Kimball  
Elizabeth M. Martinez

Assistant U.S. Attorneys